No. 95-

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

SYED H. ZAIDI,

Petitioner,

v.

HONORABLE HARRY L. CARRICO,
CHIEF JUSTICE, *et al.*,
All in individual and official capacities

HONORABLE RICHARD H. POFF, Senior Justice
HONORABLE HENRY H. WHITING, Senior Justice
HONORABLE A. CHRISTIAN COMPTON, Justice
HONORABLE LEROY R. HASSELL, Sr., Justice,
HONORABLE BARBARA M. KEENAN, Justice
HONORABLE LAWRENCE L. KOONTZ, Justice
HONORABLE ELIZABETH B. LACY, Justice
HONORABLE ROSCOE B. STEPHENSON, Jr., Justice,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE CHIEF JUSTICE AND JUSTICES OF
THE VIRGINIA STATE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

SYED H. ZAIDI
12776 Captain's Cove
Woodbridge, Virginia 22192
(703) 643-1668
Petitioner/Plaintiff Pro Se.

QUESTIONS PRESENTED

1) Whether the Justices, individually and collectively, usurped the power of the legislature by giving the word "may" in **Code of Virginia 54.1-3935 and 3937** a definition that was contrary to the intent of the legislature?

2) Whether the legislature intended to apply **permissive** standards to determine if those required to take a statutory oath had met their solemn pledges to "discharge all the dutes" of their office "faithfully and impartially"?

PARTIES TO THE PROCEEDING

Petitioner Syed H. Zaidi, **pro se**, and Respondents (in their individual and official capacities): Honorable Harry L. Carrico, Chief Justice; Honorable Senior Justices Richard H. Poff and Henry H. Whiting; and Honorable Justices A. Christian Compton, Leroy R. Hassell, Sr., Barbara A. Keenan, Lawrence M. Koontz, Elizabeth B. Lacy and Roscoe B. Stephenson, Jr.

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THE VIRGINIA STATE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT:

Syed H. Zaidi, Petitioner/Plaintiff Pro se, respectfully petitions for a writ of certiorari to review the order of February 7, 1996 by Supreme Court of Virginia denying the "request for the issuance of a rule to show cause"

to attorneys and/or law firm named in the affidavit submitted pursuant to Code of Virginia 54.1-3935 and 54.1-3937.

OPINION BELOW

Appendix A is the summary and unpublished opinion of the State Supreme Court. The original copies of affidavit were submitted individually to each of the nine justices. The decision came collectively as that of the Virginia Supreme Court.

JURISDICTION

1) "Since a judgment of the Supreme Court of a state expresses the 'power of the state as a whole' . . . we must examine the rulings for the purpose of determining whether they are arbitrary or discriminatory, and hence in violation of the Fourteenth Amendment," (*Allison W. Brown, Jr. v. Supreme Court of Virginia, Roger W. Titus v. Supreme Court of Virginia,* 359 F. Supp. 549 (1973).) (It would be conclusively established in "Reasons for Granting the Writ".)

2) "The moral fitness of an attorney to continue in the practice of his profession, should be determined upon the same principles as determine his fitness to be admitted thereto," (*Ex parte Wall,* 2 S.Ct. 569).

Pursuant to the **letter** and **spirit** of its Rule 8 (Disbarment and Disciplinary Action), the U.S. Supreme Court has a continuing interest and, therefore, jurisdiction in all allegations of suppression of evidence that an attorney "has engaged in conduct unbecoming a member of the Bar of this Court." Attorneys practice in federal courts, are members of more than one state bar and may be members of the Supreme Court Bar (and one in this case happens to be).

3) "The interest of the state in regulating a lawyer is especially great since lawyers are essential to the primary governmental function of administering justice. . . ." (*Ohralik v. Ohio State Bar Assoc.,* 98 S.Ct. 1912; *Goldfarb v. Virginia State Bar,* 95 S.Ct. 2004; *Re Primus,* 98 S.Ct. 1893).

"While lawyers act in part as self-employed businessmen, they also act as trusted agents of their clients, and as assistants to the court in search of a just solution to disputes", (*Supra* Ohralik).

As the highest court in the land, the U.S. Supreme Court has a vested interest, and therefore, jurisdiction to look into allegations that the alliance between lawyers and state courts has drifted from the "search for a just solution" towards an alleged "cover up" of "crimes against the administration of justice."

4) The U.S. Supreme Court claims "Justice for All" with no foot note saying "**i.e. if we have jurisdiction**". "Justice for All" means "Justice for **All**" who care to climb the sprawling stair way and knock on the door of the Court of Last, Last Resort in The Land!

STATEMENT OF THE CASE

In June 1992, the petitioner filed a Medical Malpractice Case against Northern Virginia Hospital Corporation t/a Northern Virginia Doctors Hospital (NVHC/NVDH) and Rene B. Alvir, M.D., LTD, ET AL in Arlington County Circuit Court as **AT LAW 92-804.** After tremendous pressure to drop the suit (and refusal to hand over papers so that a second opinion could be obtained), petitioner's first attorney withdrew on Jan. 14, 1994. Case was continued from March 1994 to December 1994. Opposing counsels indulged in what seemed to be questionable conduct.

Petitioner's second attorney non-suited on July 1, 1994 and refiled in Dec. 1994 as **AT LAW 94-1594.** Trial was set for Dec. 4, 5, 6, 1995. Petitioner's attorney indulged in conduct that could result in dismissal. On June 6, 1995, petitioner had to rush to the court to file a notice terminating services of his attorney in order to avoid misrepresentations submitted by petitioner's attorney to the court to stand.

CASE BELOW

Petitioner faced gross violations of Code of Professional Responsibility and Code of Virginia 8.01-271.1. Presiding judge and other judges disregarded such violations. Some details are in the affidavit (Appendix D).

Letter of Sept. 21, 1995: Nervous and exhausted (suffering from diabetes and major depression), the petitioner filed an affidavit. Appendix C is the response. Misconduct of opposing side increased. Petitioner filed an affidavit with Chief Judge William Winston to seek his assistance in proper administration of justice in his court. He is on Virginia Judicial Council. He never answered.

Letter of Nov. 29, 1995: Petitioner filed another affidavit. In his response (Appendix B), the chief justice accused the petitioner of having ulterior motives and explained the "import" of "may" and declined to take action.

Petitioner prepared another affidavit (Appendix D), wrote a critique of chief justice's position and submitted it to him and others separately.

Order of Feb. 7, 1996: The Full Bench issued the order (Appendix A): "Exercising the discretion vested in it by Code **54.1-3935 and -3937, the Court denies the**

request for the issuance of a rule to show cause filed herein by Syed H. Zaidi on January 25, 1996."

Petitioner did not request review because the chief justice's position and his "intelligible guidance to the bench. . . ." seemed obvious.

"Legal Realists – so called because they were said to believe that what a judge had for breakfast made more difference in how he would decide a case than what he knew about existing precedent – were at pains to point out that a judge's background might have as much to do with the way he went about deciding a case as would his legal education," ("Remarks On The Process of Judging", William H. Rehnquist, Chief Justice of United States, Washington and Lee Law Review, Spring 1992).

This brief shows that "existing precedent" and "legal education" certainly didn't contaminate the decision.

REASONS FOR GRANTING THE PETITION AND SUBSEQUENT WRIT

1) ***The Legal Flaws:*** The legal and factual premise is flawed and designed to take advantage of the perceived ignorance, inexperience or incompetence (not to mention the helplessness) of the **pro se** litigant.

a) *"May":* The case law on the meaning of "may" is undisturbed by the U.S. Supreme Court for **128 years** and by Virginia Supreme Court for **115 to 181 years.** It is thus in the elite club of the "well settled" issues.

Citations from *The Board of Supervisors of Rock Island County v. United States ex rel State Bank,* S.C., 4 Wall 435, 1867:

i) "The statute says, the board of supervisors 'may', if deemed advisable, levy a tax . . . . The real question we consider to be: Ist. Do the words 'may, if deemed advis-

able' vest any further discretion than the word 'may' vests without the words 'if deemed advisable?" 2nd. Is the discretion vested by the words of the statute that kind of a discretion which cannot be controlled by the court? . . . . We insist that the words 'if deemed advisable' have the same legal significance as the word 'may' alone or 'shall have power' and no other . . . ."

ii) "When a statute directs the doing of a thing for the sake of justice or the public good, the word 'may' is the same as 'shall' . . . What they are empowered to do for a third person the law requires shall be done. The power is given, not for their benefit but for his. It is placed with the depository to meet the demands of right, and to prevent a failure of justice. It is given as a remedy to those entitled to invoke its aid, and who would otherwise be remediless . . . .",

iii) "In all such cases it is held that the intent of the legislature, which is the test, was not to devolve a mere discretion, but to impose **'a positive and absolute duty'**."

Case law used by U.S. Supreme Court included *The Commonwealth of Virginia v. The Justices of Fairfax County*, 2 Va. Cas, 8-9, 1815. Then there is *Leighton v. The Commonwealth*, Vol. 1 Va. Dec. 1881; text reproduced in Virginia Law Journal, 1881 page 551):

"The word 'may' is . . . construed as mandatory when the legislature means to impose a positive duty, or when the public is interested or where third persons have a claim that the act shall be done. Where a statute confers authority on a court to do a judicial act in a particular case, it is imperative on the court to exercise the authority when the case arises. . . ."

b) *Intent of the Legislature:* Relevant portions of Code of Virginia 54.1-3935 say:

". . . if a complaint verified by an affidavit is made by any person to such court that any attorney has . . . violated the Virginia Code of Professional Responsibility, the court may issue a rule against such attorney to show cause. . . ."

i) The statute is obviously remedial in nature creating a right for any "person" – not a citizen or taxpayer but anyone – to bring to the attention of the court a violation of discipline. It would be absurd to argue that the "right" created here was simply to file an "affidavit". No law is needed to confer the "right" on a person to send a unilateral written communication, sworn or otherwise, to any public official. No legislation is needed to give the public official the "option" to act on the communication if it is within his/her subject matter jurisdiction. Obviously, the sole purpose of this legislation is to create a "right" that, when invoked, does get results. The affidavit is a "process" towards achieving a "right". Giving court the "discretion" to disregard the affidavit would be tantamount to giving a **right** by one hand and taking it away by the other.

We also assume legislature's familiarity with existing statutes, rules and case law. Code of Virginia **8.01-271.1** says a court "shall" take action upon observing or after a motion pointing out the violations. Also;

". . . once a violation of the ethical standards of conduct were brought to the attention of the court by any party, it had an independent duty to consider and resolve the matter, (*In re Stancraft Corp.*, 39 Bankr. 748, Banker E.D. Va., 1984).

Black's Law Dictionary (Sixth Edition) says about **Duty**:

"In its use in jurisprudence this word is the correlative of **right.** Thus, wherever there exists a right in any person, there also rests a corresponding duty upon some other person or upon all persons."

In the preceding three instances, there is no discretion.

c) *Consistency in Enforcement.* Sections 54.1-3935 and 54.1-3937 are part of the statutory regulatory process. Professions and Businesses are "regulated" to protect the public. Proceedings in regulatory forums simply focus on putting the violators "out of business" to prevent them from harming the public in their professional capacities. Any other causes arising from regulatory process, must be pursued in other designated forums.

The objective of statutory regulation would be defeated if those responsible for its oversight and administration also had the statutory option to let one violator get away while disciplining the other. In plain terms, it will be tantamount to allowing one entity to harm the public while preventing the other from doing so. This interpretation is repugnant to the very concept of law making in a democratic society.

d) *Protecting the Public:* Case law at both state and federal levels has repeatedly emphasized that disciplinary rules are to "protect" the "public".

i) "Disciplinary rules are rules of general application and are statutory in character. They act not on parties as litigants but on all those who practice law in Virginia. They do not arise out of a controversy which must be adjudicated, but instead out of a need to regulate conduct for the protection of all citizens . . . ." (*Hirschkop v.*

Snead, 594 F.2nd 356, Court of Appeals Fourth Circuit, 1979).

ii) "The principles which control our decision have been repeatedly stated. A proceeding to discipline an attorney is not a criminal proceeding and the purpose is not to punish him but to protect the public," (*Seventh District Committee v. Gunter,* 212 Va. 278, 1971).

The option of protecting or not protecting a citizen at will is the hallmark of illegitimate and dictatorial regimes or the so-called **imperious bureaucracies.** Such practices in United States would be in clear violation of the Fourteenth Amendment to the Constitution.

2) Wider Implications for Administration of Justice:

a) *Judicial "Incest":* In Dialogues of Plato (The Republic I), after a series of analogies, Socrates draws an interim conclusion (going full circle i.e. sublime-to-absurd-to-sublime): **"Then he who is a good keeper of anything is also a good thief?"**

The institutional clients normally have an in house counsel to deal with an outside counsel. An ordinary litigant solely relies on the court for protecting him/her from his/her "good keeper" turning into a "thief". He/she may be represented by an attorney but himself/herself lacks the knowledge (and the time) to detect unethical conduct by his/her own attorney. The guardian role of the court becomes indispensible when one party is **pro se** with no formal education and experience in the field of jurisprudence and the other party is represented by a trained lawyer or a major law firm.

b) *Virginia State Bar:* Petitioner filed a complaint with the Virginia State Bar and received this response from Assistant Bar Counsel/Intake, (Feb. 27, 1996):

"The Virginia State Bar will not take action on your allegations arising out of perceived problems with discovery responses tendered by the defendant's attorney. Any remedies relating to the discovery process should be sought through the court in which your case is pending. The Bar cannot decide disputes regarding civil discovery."

Legal Ethics Opinion #1451 is specifically about **discovery**. There is no law or rule that makes an exception to investigating misconduct during discovery. These were not "perceived problems." The petitioner alleged perjury and inducement to perjury with self-evident, self-supporting documentary evidence. Assistant Counsel's position was endorsed by Bar Counsel Michael L. Rigsby in his letter dated March 12, 1996.

c) *Virginia Lawyers Weekly:* Petitioner wrote to Virginia Lawyers Weekly which invited Bar Counsel to respond. Mr. Rigsby said (VLW April 15, 1996):

"Thus, one might argue, as Mr. Zaidi submits, that the bar must investigate any complaint filed with Virginia State Bar which calls into question the ethics of a Virginia Licensed attorney.

"I have never understood the Rules of Court to be as far-reaching as that suggested by Mr. Zaidi. His position leaves no room for professional judgment, respect for the limited resources of the bar or intervention by other agencies more closely associated with the allegations raised. . . . I think it wholly inappropriate for the bar to interject itself in the civil dispute between Mr. Zaidi and the parties he has sued."

The Bar Counsel could have been more accurate and truthful if he stopped at: **"I have never understood the Rules of Court!"**

Legal Ethics Opinion #1646 is specifically about the mandatory requirement of reporting a violation during civil litigation.

The Bar lawyers lied three times on official stationery under their signatures. The Bar Counsel then lied publicly in a newspaper that circulated among lawyers. Every lawyer reading that would have known that Bar Counsel was lying. The Bar has a duty to conduct preliminary investigation. The "professional judgment" is to reach conclusions based on evidence gathered during an investigation and not to decide if the investigation should be conducted in the first place. And there is no provision for using limited resources as an excuse for not doing the preliminary investigation.

The Bar is an administrative arm of the State Supreme Court. Did the Bar lawyers ever think that they could lose their jobs and licenses if the"boss" found out? Even more important is the message this sends to practicing lawyers (particularly solo practitioners) about the "integrated" Bar and its supervising authority – the Supreme Court. If the Bar can act with such impunity, no one is safe.

"The District Committee's failure to initiate their own investigations has been attributed to a reluctance on the part of the committee members to prosecute attorneys with whom they have close professional or social ties. Likewise there may be a reluctance to prosecute a prominent attorney or a member of a prominent firm," (*"Notes and Comments", Washington and Lee Law Review, Vol. XXIX, 1972*).

Quoted in the footnote was the American Bar Association Special Commission Report:

"Far from reporting infractions, the Committee contends that 'lawyers will not appear or cooperate in proceedings against other lawyers but instead will exert influence to stymie the proceedings. . . ."

But no lawyer can exert any influence unless the Full Bench of State Supreme Court looks the other way because one – just one – justice can send packing an attorney no matter how big a law firm he/she worked for.

d) *Justice is the Interest of the Stronger?* Add to this an insight offered by the Chief Justice of the United States who once served on the "Administrative Committee" of the Bar in Arizona:

"My impression from this service was that the typical respondent in a proceeding before the Committee was a solo practitioner who was struggling financially; he ended up using up for his own purposes trust account money which belonged to his client.

"Lawyers in the established firms in Phoenix managed to avoid getting into this trouble, not necessarily because they were more ethical, but because they did not feel a great deal of financial pressure . . . . Each had institutional clients who brought in sizeable revenues to the firm each year. The associates were assured of being able to make house payments, and the partners were assured of being able to pay their country club dues . . . ." (Dedicatory Address, "The Legal Profession", Chief Justice William Rehnquist, Indiana Law Journal, Vol. 62, 1987)

This petitioner, most respectfully, hopes that the eminent jurist is today less naive (good people always think good of others) than he seems to have been 30 (or so) years ago. The solo practitioner is the proverbial **poor little bastard** that the bar straightens out to show "work done" to justify its existence.

The firms brought "sizeable revenue each year" from "institutional clients" for doing what? If there is no such thing as a "free lunch", there certainly cannot be any such thing as being able to make house payments and enjoy country club memberships without contributing towards "maximization of income" of the institutional client. This often means cutting corners on laws that add to expense of providing products and services and avoiding or delaying payments of resulting claims.

"Ethical considerations, after all, are factors which counsel against maximization of income in the best Adam Smith tradition, and the stronger the pressure to maximize income the more difficult it is to avoid ethical margins," said the Chief Justice of United States (Indiana Law Journal).

True, indeed!

e) *Court's Interest in "maximization of income"?* This brings us to the most horrible aspect of this situation. This was a medical malpractice case. The claim could have been settled as early as 1992. The insurance carrier paid the law firm and its general counsel supervised the litigation for four years. If you alter medical records, destroy originals, destroy policy manuals, have an impersonator sign interrogatories and give deposition under oath, refuse to release the insurance agreement (because it was a fronting policy) and lie under oath that it had a limit of $1,000,000, then you ought to know that you do not have a defence worth the name. How come you are

so confident that none of the four circuit court judges would catch you? That the police won't register a complaint of perjury? That the magistrate would refuse to take an affidavit under Rule 3A.3? That commonwealth attorney won't listen to petitioner? That chief judge would not respond? That chief justice would stall petitioner? That the full bench would defy the intent of the legislature, trample its own case law and that of U.S. Supreme Court **simply to save you a few hundred thousand dollars?**

Our lawyers, judges and justices are human beings and not angels although we expect them to be. But let us make concessions for the **old boys** syndrome or **boys will be boys** syndrome. In spite of that a word on Sept. 21 (or Nov. 29 or Feb. 7) would have been enough: "Look fellows, we have protected you to the extent we can without making it **obvious** to the **naked eye**. If you do not have legitimate grounds of defence, then settle his claim. If you do have legitimate grounds, then proceed in a legitimate manner. We hear one more time from this **Syed H. Zaidi**, we are going to issue the rule . . . ."

But there seemed to be a **duty** to protect the law firm that was trying to save a **few hundred thousand dollars** for an insurance carrier. A reasonable inference is that not only the bar is "integrated" here but everything else is, too.

f) *We Expect More From Natural Born?:* All (lawyers and) justices take a statutory oath (Code of Virginia 49-1) administered by the chief justice:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all of the duties

incumbent on me as: Justice of the Supreme Court of Virginia."

In *Sugarman v. Dougall*, 93 S.Ct. 2861, 1973 we had an interesting dissenting observation (emphasis added):

"It is not irrational to assume that **aliens as a class** are not familiar with how **we** as individual **treat others** and how **we** expect 'government' to treat us. An alien who grew up in a country in which political mores do not reject **bribery** or self-dealing to the same extent that our culture does; in which an imperious bureaucracy historically adopted a **complacent or contemptuous** attitude towards those **it** was supposed to serve; in which fewer if any checks existed on administrative abuses; in which 'low level' civil servants **serve at the will** of their **superior** – could rationally be thought not to be able to deal with the **public** and the **citizen** with the same rapport that one familiar with our **political and social** mores would, or to approach his **duties** with the **attitude** that **such positions exist for service**, not **personal sinecures** of either the **civil servant** or his or her **superior** . . . . All these factors could materially affect the efficient functioning of the government, and **possibly** as well the **very integrity** of that government. Such a legislative purpose is clearly not irrational."

The caution does have merit. An alien coming from a contaminated environment could have **An Integrity Deficiency Syndrome** which could destroy the **immunity** our system enjoys from **viruses** of **complacency, disregard for public service** and **corruption.** The suspicion and concern is no less in good faith than the one expressed about agricultural products entering our country or travelers coming from Zaire.

The petitioner has presented the second question simply to have this issue addressed. The Court must

determine if this is an **imperious bureaucracy of "natural born citizens"**? If the Bar lawyers serve **at the will** of the **superior**? If their **superiors** know what **we** expect from our government? If both they and their **superiors** have a **contempruous** attitude towards those they were supposed to **serve** and **protect**? If their actions have affected the **very integrity** of the system?

They deserve our deepest sympathy if they were victims of **An Integrity Deficiency Syndrome** from the beginning of their **professional childhood** and were, therefore, incapable of resisting viruses that destroy those highly desirable qualities that a natural born is supposed to have. But there is an **absolute duty** to ensure that **An Integrity Deficiency Syndrome** in these persons doesn't adversely affect the unsuspecting consumers of judicial services since these are heavily subsidized by taxpaying consumers.

3) Conclusion:

This Court must conduct serious inquiry and give a definitive opinion otherwise the **legislative purpose** of requiring an **oath** as a condition of induction into the Bar and on to the bench would be defeated. The judicial system should be a **heaven** only in the sense that one act of **disobedience** would lead to **expulsion**. The judicial system should be never allowed to become (as it has been) an **asylum** or **sanctuary** for willful and habitual offenders.

The outcome of this petition for the **writ of certiorari** will profoundly impact the administration of justice in Virginia (and similar situations elsewhere). It should be also granted not because it might remove obstacles in the plaintiff's path but because a naturalized citizen's **very faith** in the **very integrity** of our system is **at stake**.

Depending on the example set, it could affect the faith of millions of others of similar background.

May the naturalized "we" dare have the same expectations from the government that the natural born "we" have from it? Or shall "we" close our eyes not so much to have wonderful dreams but to avoid the sight of live nightmares?

MOST RESPECTFULLY SUBMITTED,

SYED H. ZAIDI
12776 Captain's Cove
Woodbridge, Virginia 22192
(703) 643-1668
Petitioner/Plaintiff Pro Se.

May 3, 1996

APPENDIX A

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 7th day of February, 1996.

In re: Syed H. Zaidi, Petitioner

Exercising the discretion vested in it by Code § § 54.1-3935 and -3937, the Court denies the request for the issuance of a rule to show cause filed herein by Syed H. Zaidi on January 25, 1996.

A Copy,

Teste:
/s/ [Illegible]
Clerk

APPENDIX B

SUPREME COURT OF VIRGINIA

SUPREME COURT BUILDING
RICHMOND, VIRGINIA 23219
804-786-2251

November 29, 1995

Mr. Syed H. Zaidi
12776 Captain's Cove
Woodbridge, Virginia 22192

Dear Mr. Zaidi:

I have your letters of November 14, 1995, and November 24, 1995. In the letter of November 14, you cite Code §§54.1-3935 and -3937 and request that I review your affidavit and "initiate action."

In responding recently to a similar request from you, I said that from the information you had furnished, "it would be impossible to frame the rule to show cause that is required to initiate a proceeding under either §54.1-3935 or §54.1-3937." I have the same trouble now, but there is an additional reason that, in my opinion, militates against the granting of your request.

It seems rather obvious to me that you are seeking through the use of the disciplinary process to gain some advantage over the attorneys who oppose you and that you are seeking to use me to help you gain that advantage. Having come to this conclusion, I point out that both the cited Code sections state that the court *may* issue a rule to show cause upon the affidavit of a person. The word "may" imports the use of discretion. Exer-

cising discretion in this matter, I deny your request to "initiate action."

Very truly yours,

/s/ Harry L. Carrico
Harry L. Carrico
Chief Justice

APPENDIX C

SUPREME COURT OF VIRGINIA
SUPREME COURT BUILDING
RICHMOND, VIRGINIA 23219
804-786-2251

September 21, 1995

Mr. Syed H. Zaidi
12776 Captain's Cove
Woodbridge, Virginia 22192

Dear Mr. Zaidi:

I have your letter of September 5 requesting that I appoint a three-judge court to "investigate this entire affair," apparently meaning the litigation in which you were involved with Rene B. Alvir, M.D. I also have the affidavit you enclosed with your letter. After reviewing the contents of both writings, I have concluded that I cannot grant your request.

You refer in your letter to Code §54.1-3935 and -3937. From a reading of these sections, it is clear that when a three-judge court is appointed, its sole function is to "hear and decide the case." In other words, the authority of the three-judge court is limited to adjudicating; it has no authority to investigate. Therefore, if, as your letter indicates, you want your case investigated, that would not be a proper function for a three-judge court. The appropriate entity to investigate complaints against attorneys is the Virginia State Bar.

Moreover, from a reading of your letter and affidavit, I am unable to discern what specific provisions of the Canons of Professional Responsibility you claim were violated by particular attorneys on definite occasions.

Without this specificity, it would be impossible to frame the rule to show cause that is required to intiate a proceeding under either §54.1-3935 or §54.1-3937.

Very truly yours,

/s/ Harry L. Carrico
Harry L. Carrico
Chief Justice

HLC/cl

APPENDIX D

AN AFFIDAVIT TO THE FULL BENCH OF THE VIRGINIA SUPREME COURT

The following is being submitted to the **Full Bench** requesting action under Code of Virginia Section **54.1-3935** against Stephen L. Altman, Esq. (VSB #17058) and Brendy B. Esmond (VSB #34558), Bruce A. Levine, Esq. and under **54.1-3937** against **Montedonico, Hamilton and Altman, P.C.**

"It is not a sufficient defense that the victim was not the attorney's client; an attorney's duty not to practice deceit and misrepresentation is not confined to his dealings with his own clients, but it extends to others who might be adversely affected by such conduct," (*Morrissey v. Virginia State Bar,* 248 Va. 334 (1994)).

Statements following "*Note*" are for context, etc. and are not under oath.

BEGIN TEXT OF AFFIDAVIT:

1) That **Stephen L. Altman, Esq., Brendy B. Esmond, Esq., Bruce A. Levine, Esq. and Montedonico, Hamilton and Altman, P.C.** have violated the Code of Professional Responsibility of Virginia State Bar and Code of Virginia **Section 8.01.271.1 (and possibly other statutes)** on various occasions as Counsels for Defense in Syed H. Zaidi v. Rene B. Alvir, M.D., LTD, et al, **AT LAW 94-1594** in the Arlington County Circuit Court. (*Note:* **DR 1-102 (A). DR 4-101 (D)1 and 2. DR 7-101 (A)(2). DR 7 1-2 (A) 2, 3, 4, 5, 6, 7, 8. DR 7-105 (A) (5), VSB/LEOs 743, 924, 948, 1049, 1362, 1429, 1451, 1592 and 1608.)**

2) The Defense Counsel provided the Plaintiff with Answers to First Set of Interrogatories on Sept. 11,

1995. Instead of having the interrogatories answered and signed under oath by "any officer or agent" of the "party" (**Rule 4:1 (b) (2)**) to the suit, they had one Mr. Gerard Filicko impersonate, **at present,** as Chief Executive Officer of the Northern Virginia Doctors Hospital (NVDH). Mr. Filicko (a former employee of NVDH) identified himself as CEO of Vencor Hospital also (which he is) and then signed off as CEO of NVDH. (*Note:* **DR 1-102(A) 1 to 4. DR 4-101 (D) 1 and 2. DR 7-102 (A) 3, 4, 5, 6, 7. DR 7-105(A) (5) VSB/LEOs 743, 1362, 1429, 1451, 1608.)** (*Note:* There is possible **inducement to commit perjury, 18.2-436,** because Mr. Filicko couldn't just walk in and demand that he be allowed to answer interrogatories in a case where he and his current employer were not a "party". Not only he had to be convinced and/or pressured but the permission of his employers had to be obtained to commit this felony.)

3) The Defense Counsels asked and/or allowed Mr. Filicko to commit perjury by answering Second Set of Interrogatories on October 11, 1995 where Mr. Filicko again claimed to be CEO of NVDH. (*Note:* **DR 1-102 (A) 1 through 4. DR 7-102 (A) 3 through 7. VSB/LEOs 743, 1362, 1429, 1451, 1608.)**

4) In executing Answers to Second Set of Interrogatories, Mr. Altman knew that Mr. Filicko stated that NVDH had an "Insurance with St. Paul Fire and Marine Insurance Company, Policy No. **572MA1617, $1,000,000 policy limit."** (*Note:* **DR 1-102 (A) 1 through 4. DR 7-102 (A) 2, 3, 4, 7. VSB/LEOs 743, 1362, 1429, 1451 and 1608.)**

(*Note:* As of this writing Mr. Altman has failed to produce a valid copy of the insurance policy **572MA-1617** showing that NVDH has a coverage of **$1,000,000.**

PERJURY may stem from the fact that **#572MA1617** coverage "limit" is not **$1,000,000.** Even if it is, it may involve other insurance policies issued by other carriers. However, none of it can be confirmed until **Stephen L. Altman, Esq.** obeys the court order of December 22, 1995 and produces a complete copy of the insurance policy under a sworn statement by the insurance carrier representative.)

5) Answering interrogatories in AT LAW 92-804, **Stephen Altman, Esq.** gave executed interrogatories under oath stating that the Defendant had coverage of **$1,000,000** under a single insurance policy number **572MA1617** issued by **St. Paul Fire and Marine Insurance Company.** (*Note:* **DR 1-102 (A) 1 through 4, DR 7-102 (A) 2 through 7. VSB LEOs 743, 1362, 1429, 1451 and 1608.)**

6) On October 31, 1995, Stephen L. Altman, Esq. brought with him Mr. Gerard Filicko for a deposition and **either induced** Mr. Filicko and/or knowingly allowed Mr. Filicko to commit perjury. Mr. Filicko not only claimed to be CEO of NVDH but also CEO of NVHC. (*Note:* **DR 1 102 (A), DR 7-102 (A) 3, 4, 5, 6, 7, 8. VSB/LEOs 1362 and 1451.)**

7) During deposition of October 31, 1995, Mr. Altman's witness, Mr. Filicko, lied under oath that he was CEO of NVHC and NVDH because these were one and the same. Mr. Altman intervened to reiterate the position. (*Note:* **DR 1-102 (A), DR 7-102 (A) 3, 4, 5, 6, 7. VSB/LEOs 743, 1362, 1451 and 1608.)**

8) During deposition of October 31, 1995, Mr. Altman refused to accept as authentic the documents he had provided in response to Request for Production of

Documents (Paragraph 11 of 21 from Rules and Regulations). Following is an exchange between Plaintiff and Mr. Altman:

MR. ZAIDI: So these documents no longer exist.

MR. ALTMAN: So, what are these documents, and where did you get them? Are they for a different year?

MR. ZAIDI: No – Mr. Altman, you insist so much on authentication. There's no authentication. I don't know.

MR. ALTMAN: So, where did you get them?

MR. ZAIDI: You sent it to us.

MR. ALTMAN: How could I have sent it to you when I said they don't exist. Somehow I think that doesn't make sense.

(*Note: Transcript of October 31, 1995 deposition.*)

Mr. Altman was lying and also assisting his client in lying that the document in question (Exhibit 8 of Mr. Filicko's deposition) wasn't sent by him. Answering Q#6 in First Set of Interrogatories, it was said under oath: **ANSWER: You are referred to Paragraph 11 of Page 21 of the Rules and Regulations of the Medical Staff.**

Also, answering Q#113 in Request for Admission, Mr. Altman had said that the statement cited (the same in para 11 of page 21) **"is contained in the Rules and Regulations."** (*Note:* **DR 1-102 (A), DR 7-102 (A) 3, 4, 5, 6, 7. VSB/LEOs 743, 1362, 1451 and 1608.)**

9) **Stephen Altman, Esq.** lied that "Nowhere do the rules provide for the production of insurance agreement," when asked to produce insurance policy **#572MA1617.** Rule 4:1(b)(2) specifically provides for production of the insurance agreement (*Note:* **DR 1-102(A), DR-7-102 (A), VSB/LEOs 743, 1362, 1451 and 1608.)**

10) Knowing that he had and/or his client had lied in Response to Plaintiff's Second Request for Production of Documents **Stephen Altman, Esq.** still sent an associate, Bruce A. Levine, Esq. on November 28 and subsequently on December 22, 1995 to plead that Rules of the Supreme Court didn't provide for production of the insurance agreement. (*Note:* **DR 1-102(A), DR 7-102 (A), VSB/LEOs 743, 1362, 1429, 1451 and 1608.)**

11) **Stephen Altman, Esq.** and **Bruce A. Levine, Esq.** defied the court order of December 22, 1995 to produce the insurance agreement by January 5, 1996. A document purported to be Policy No. #572MA1617 **was delivered on or about January 16, 1996.** (*Note:* **DR 1-102 (A) 1 through 4. DR 7-102 (A) 2 through 7.)**

12) **Stephen Altman, Esq.** circumvented the December 22, 1995 court order to produce the "insurance agreement" by sending a stack of forms which didn't constitute a "valid" policy by the standard specified by **St. Paul Fire and Marine.** (*Note:* **DR 1-102 (A) through 4, VSB/LEOs 743, 1362, 1429, 1451, 1592 and 1608.)**

13) **Stephen Altman, Esq.** and **Bruce A. Levine** delayed honoring the court ordered deadline to produce the insurance agreement by 11 days. (*Note:* **DR 1-102 (A) through 4. DR 7-102 (A).)** (*Note:* It is reasonable to assume that a copy of the insurance agreement would be with the defendant as well as Mr. Altman who has been representing the defendant on behalf of the insurance carrier since Sept. 1992. In an insurance related claim, the policy is the first and foremost document the lawyer representing the interests of an insurance carrier would have in his possession.)

14) **Stephen L. Altman, Esq.** and **Bruce A. Levine, Esq.** provided the document purported to be Policy No. **572MA1617** as "attested" but without notarization. (*Note:* **DR 1-102 (A), 1 through 4. VSB/LEOs 743, 1362, 1429, 1451, 1592 and 1608.)**

15) **Stephen Altman, Esq.** and **Bruce A. Levine, Esq.** provided a document purported to be insurance policy **#572MA1617** as being "certified" but the policy number was indicated as **566XM1617.** (*Note:* **DR 1-102. (A) 1 through 4. VSB/LEOs 743, 1362, 1429, 1451, 1592 and 1608.)**

16) **Stephen L. Altman, Esq.** and **Brendy B. Esmond, Esq.** lied to the Court in the brief for August 4, 1995 hearing that Northern Virginia Doctors Hospital and Vencor Hospital were "one and same" and thus subpoena duces tecum couldn't be issued to a "party" and be quashed. Ms. Esmond knew that Vencor was not a "party" as it was owned by a separate corporation which was not a "party" to the suit, had not purchased NVDH but "assets" of NVDH and had given a new name. (*Note:* The purpose of quashing the subpoena by lying was to delay production of medical records so that Plaintiff couldn't designate experts and a motion for summary judgment could be moved, and was moved.) (*Note:* **DR 1-102 (A) 1 through 4. DR 7-102 (A) and DR 7-105 (A). VSB/LEOs 743, 1362, 1429, 1451, 1592, 1608.)**

17) **Brendy B. Esmond, Esq.** altered an order by Honorable Paul F. Sheridan entered on July 14, 1995. Ms. Esmond added the word "all" and alphabet "s" to show that a subpoena of July 10 had been quashed also by the judge. (*Note:* Again motive was to delay production of medical record without which Plaintiff couldn't get expert witnesses.) (*Note:* **DR 1-102 (A) 1 through 4. DR 7-102 (A), DR 7-105 (A). VSB/LEOs 743, 1362, 1429, 1451, 1592 and 1608.)**

18) **Stephen Altman, Esq.** provided medical records to Syed H. Zaidi that he knew or should have known to have been altered and his attention was drawn to the fact that records were altered. (*Note:* **DR 1-102 (A) 1 through 4, VSB/LEOs 924, 948, 1049, 1362, 1451 and 1608.)**

19) **Stephen L. Altman, Esq.** knew that his client had destroyed original medical records which were necessary to verify the authenticity of the records provided by defendant and obtained in 92-388 because these had substantive inconsistencies. (*Note:* **DR 1-102 (A) 1 through 4. VSB/LEO 743, 924, 948, 1362, 1451 and 1608.)**

20) **Stephen L. Altman, Esq.** twice, on record, told the court reporter that a transcript of the deposition should be provided to Plaintiff only if "he orders a copy and pays for it." And he again told another court reporter: "Mr. Court Reporter I suggest you get your money up front on that."

(*Note:* **It is none of his business how and if the court reporter bills me.** I don't know what codes are violated. But we expect certain decency from professionals while dealing with the opposing party, be it a counsel or pro se. A lawyer who becomes partner in a major law firm should show some class.)

END TEXT OF AFFIDAVIT.

Signed

Syed H. Zaidi
12776 Captain's Cove
Woodbridge, Va. 22192

Subscribed to and sworn before me:
My Commission Expires On: